

**CALENDAR ITEM
C88**

A 16

04/20/17

AD 617

W 25109

G01-01

R. Boggiano

S 9

J. Porter

**CONSIDER THE REVISED PHASE AREA BOUNDARIES AND THE HAZARDOUS
MATERIAL REMEDIATION ACTION FINDING FOR CLOSING PHASE 2.5 AS
REQUIRED BY THE NAVAL AIR STATION ALAMEDA TITLE SETTLEMENT AND
EXCHANGE AGREEMENT**

PARTIES:

City of Alameda

State of California, acting by and through the California State Lands Commission

INTRODUCTION:

In October 2012, the California State Lands Commission approved the Naval Air Station Alameda Title Settlement and Exchange Agreement (Agreement) ([Calendar Item C 94, October 19, 2012](#)) and it was recorded on June 30, 2014. The parties to the Agreement are the City of Alameda and the Commission.

The subject property of the Agreement includes lands within and adjacent to the former Naval Air Station Alameda (NAS Property) located in the city and county of Alameda. The Agreement authorizes a land exchange that will impress the Public Trust on certain lands within the NAS Property (Trust Addition Lands) and terminate the Public Trust in other lands within the NAS Property (Trust Termination Lands). The Agreement also settles and establishes certain boundary lines and settles and confirms the character of certain lands within the NAS Property as either subject to the Public Trust (Agreed Trust Lands) or as free from the trust (Agreed Non-Trust Lands). The total Trust Termination Lands are approximately 304 acres. The total Trust Addition Lands are approximately 121 acres. The total Agreed Trust Lands are approximately 1,478 acres and the total Agreed Non-Trust Lands are approximately 197 acres. As part of the original approval of the Agreement, the Commission made specific findings that the Agreement did not substantially interfere with the Public Trust that it was

CALENDAR ITEM NO. **C88** (CONT'D)

consistent with the enabling legislation, Statutes of 2000, Chapter 734, and in the best interests of the State.

The Agreement authorized the conveyances to occur in phases. Closing phase 2.5, the third out of five total closing phases, requires the Commission to approve the revised phase area boundaries and make a finding about the hazardous material remediation involving the property to be exchanged as part of the second closing phase.

Revised Phase Area Boundaries:

Each closing phase must have a configuration of Trust Termination Lands and Trust Addition Lands that substantially conform to the phase area boundaries in Exhibit I of the Agreement, as determined by the Commission's Executive Officer. Because closing phase 2.5 was not originally contemplated as a closing phase in the Agreement, the Commission must approve the revised phase boundaries prior to the conveyance. The Commission must also find that, after each closing phase under the revised phase area boundaries, the cumulative lands or interests in lands that have been exchanged into the Public Trust will be configured in a way that furthers the purposes of the overall exchange.

The United States has further modified the sequence of lands that will be transferred to the City. The United States will be conveying 2.61 acres of lands currently included in closing phase 4. The closing of phase 2.5 will consist of 2 acres of Trust Termination Lands and 0.61 acre of Agreed Trust Lands that are shown on Exhibit A. Closing phase 2.5 accelerates the land transfer that was previously planned as part of closing phase 4 and otherwise does not change the overall configuration of the overall exchange. The Agreement ensures that substantial portions of the waterfront on the NAS property is dedicated to the public trust and protects public access to the waterfront. The Agreement also allows for redevelopment and reuse of other nonwaterfront lands that contain buildings constructed by the Navy that are not useful for trust purposes. Staff believes that after each closing phase under the revised phase area boundaries, the cumulative lands or interests in lands that have been exchanged into the Public Trust are configured in a way that furthers the purposes of the overall exchange.

Hazardous Remediation Action Finding:

A condition precedent to each closing phase is that the Commission find that all the remedial action necessary to protect human health and the environment with respect to hazardous substances on the land has been completed in accordance with the Federal Facility Agreement for Alameda Naval Air Station between the

CALENDAR ITEM NO. C88 (CONT'D)

U.S. Environmental Protection Agency (US EPA), the U.S. Navy, and the State. The United States must provide a warranty in accordance with Section 9620(h)(3)(A) of title 42 of the United States Code or obtain a warranty deferral that has been approved by the governor. The deed from the Navy to the City will contain warranties in accordance with Section 9620(h)(3)(A) of title 42 of the United States Code. The warranty will state that all remedial action necessary to protect human health and the environment with respect to any hazardous substance identified pursuant to section 120(h)(3)(A)(i)(I) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) remaining on the property has been taken before the date of the quitclaim deed, and any additional remedial action found to be necessary after the date of the quitclaim deed shall be conducted by the United States. This covenant shall not apply to the extent that the Navy caused or contributed to any release or threatened release of any hazardous substance, pollutant, or contaminant.

On March 10, 2017, the Navy submitted a final Finding of Suitability to Transfer Phase 3a Former Naval Air Station Alameda, Alameda, California. This document covers the NAS Alameda property that will be included in closing phase 2.5 which includes a portion of two CERCLA sites: Operable Unit (OU) 2C and Installation Restoration (IR) Site 35. The US EPA submitted their concurrence letter on March 27, 2017. The California Department of Toxic Substances Control (DTSC) submitted a concurrence letter on March 28, 2017.

Commission staff has reviewed the relevant documents. Staff recommends that the Commission find that all remedial action necessary to protect human health and the environment with respect to hazardous substances on the land has been completed and determined in accordance with the Federal Facility Agreement for Alameda Naval Air Station.

OTHER PERTINENT INFORMATION:

1. The State, acting by and through the Commission, was authorized under Chapter 734, Statutes of 2000, as amended by Chapter 429, Statutes of 2011, to enter into the Agreement.
2. In February 2014, the Commission approved the first closing phase for the Agreement ([Calendar Item C62, February 21, 2014](#)).
3. In February 2016, the Commission approved the revised phase area boundaries for the second closing phase at Naval Air Station Alameda ([Calendar Item C79, February 9, 2016](#)).

CALENDAR ITEM NO. **C88** (CONT'D)

4. In April 2016, the Commission approved the hazardous material finding and record of survey at Naval Air Station Alameda for the second closing phase. ([Calendar Item C61, April 5, 2016](#)).
5. The staff recommends that the Commission find that the subject approval of the second memorandum of phased area boundary revision and hazardous material remediation action finding do not have a potential for resulting in either a direct or a reasonably foreseeable indirect physical change in the environment, and are, therefore, not projects in accordance with the California Environmental Quality Act (CEQA).

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, sections 15060, subdivision (c)(3), and 15378.

6. The proposed action is consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest levels of public health and safety in the protection, preservation and responsible economic use of the lands and resources under the Commission's jurisdiction, and Strategy 1.2 to provide that the current and future management of ungranted sovereign lands and resources and granted lands, including through strategic partnerships with trustee ports and harbor districts, is consistent with evolving Public Trust principles and values, particularly amid challenges relating to climate change, sea-level rise, public access, and complex land use planning and marine freight transportation systems.

EXHIBIT:

- A. Location and Site Map of Public Trust and Trust Termination Parcels

IT IS RECOMMENDED THAT THE COMMISSION:

CEQA FINDINGS:

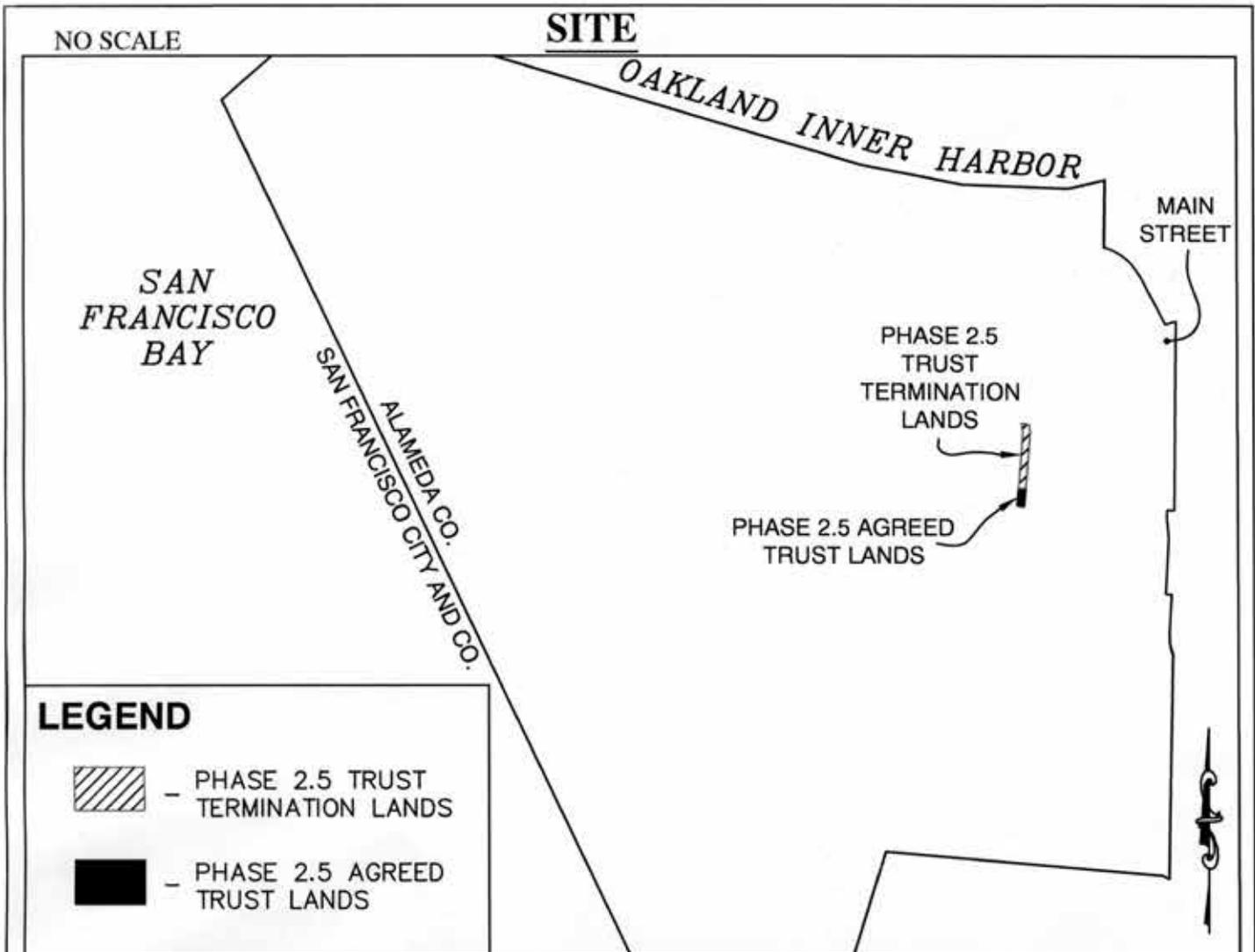
Find that the subject approval of the second memorandum of phased area boundary revision and hazardous material remediation action finding are not subject to the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15060, subdivision (c)(3), because the subject activity is not a project as defined by Public Resources Code section 21065 and California Code of Regulations, title 14, section 15378.

CALENDAR ITEM NO. **C88** (CONT'D)

AUTHORIZATION:

1. Approve the revised phase area boundaries for closing phase 2.5 at Naval Air Station Alameda and find that the cumulative lands or interests in lands that have been exchanged into the Public Trust are configured in a way that furthers the purposes of the overall exchange.

2. Find that all remedial action necessary to protect human health and the environment with respect to hazardous substances on the land proposed for closing phase 2.5 has been completed as determined in accordance with the Federal Facility Agreement for Alameda Naval Air Station between the U.S. Environmental Protection Agency, the U.S. Navy, and the State, and the United States has provided a warranty in accordance with Section 9620(h)(3)(A) of title 42 of the United State Code.



FORMER NAVAL AIR STATION ALAMEDA TITLE SETTLEMENT AND EXCHANGE AGREEMENT PHASE 2.5



MAP SOURCE: USGS QUAD

Exhibit A

G 01-01/ AD 617
 NAS ALAMEDA TITLE SETTLEMENT AND EXCHANGE AGREEMENT PHASE 2.5 REVISED PHASE AREA BOUNDARIES ALAMEDA COUNTY



This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.